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Debtor in Possession*

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Debtor in Possession/Petitions to Practice
in Nevada are Pending*

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

SPECIALTY TRUST, INC.,

Debtor.

Case No. 10-51432-GWZ

Chapter 11

In re

SPECIALTY ACQUISITION CORP,

Debtor.

Case No. 10-51437-GWZ

Chapter 11

In re

SAC II,

Debtor.

Case No. 10-51440-GWZ

Chapter 11

In re

SAC D-1, LLC,

Debtor.

Case No. 10-51441-GWZ

Chapter 11

**DEBTORS' MOTION FOR ORDER
DIRECTING JOINT ADMINISTRATION OF
RELATED CHAPTER 11 CASES PURSUANT
TO FED. RULE BANKR. P. 1015(b) AND
LOCAL RULE 1015(b)**

Hearing Date: OST requested for May 13, 2010
Hearing Time: OST requested for 2:00 p.m.

1 TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

2 The above-captioned debtors and debtors in possession (the "Debtors")¹ hereby move
3 (the "Motion") the Court for the entry of an order, pursuant to rule 1015(b) of the Federal Rules
4 of Bankruptcy Procedure (the "Bankruptcy Rules") and rule 1015(b) of the Local Rules of
5 Bankruptcy Procedures for the District of Nevada (as amended, the "Local Rules"), authorizing
6 and directing the joint administration of the Debtors' related chapter 11 cases for procedural
7 purposes only. In support of this Motion, the Debtors respectfully represent as follows:

8 **Background**

9 On April 20, 2010 (the "Petition Date"), the Debtors each filed voluntary petitions for
10 relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in possession of
11 their property and are operating and managing their businesses, as debtors in possession,
12 pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a
13 trustee or examiner has been made, and no official Committee has yet been appointed by the
14 Office of the United States Trustee.

15 **A. The Business**

16 Specialty Trust, Inc. ("Specialty Trust") is a privately held mortgage finance company
17 that acquires and holds, in a tax-advantaged real estate investment trust or REIT structure,
18 mortgage loans and mezzanine loans secured by property located primarily in Nevada, Arizona
19 and California. Specialty Trust was founded in 1997 by its current chairman and chief executive
20 officer, Nello Gonfiantini III. Specialty Trust is held by approximately 435 shareholders, most
21 of whom consist primarily of individuals, family trusts, and local businesses' pension and profit
22 sharing plans. The total capital invested by the shareholders is approximately \$170 million. Mr.
23 Gonfiantini personally owns approximately 5.9% of such shares.

24 Loans are generally made at low loan-to-value ratios, usually 50% or less. Most loans
25 have terms of one to three years. The majority of Specialty Trust's mortgage loan balances are
26

27
28 ¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: Specialty Trust, Inc. (2463); Specialty Acquisition Corp. (3680); SAC II (2463); and SAC D-1, LLC (1858).

1 secured by first deeds of trust on the underlying real property, with the remaining mortgage loan
2 balances secured by junior liens. Specialty Trust's mortgage loans may be secured by mortgages
3 on unimproved as well as improved real property and non-income producing as well as income-
4 producing real property.

5 Specialty Trust currently holds loans with a total amount owing from its borrowers of
6 approximately \$166.8 million, which loans have a book value of approximately \$120.9 million.
7 Specialty Trust also owns outright or through its subsidiaries REO property (property obtained
8 through foreclosures or similar actions from its loan portfolio) with a current market value of
9 approximately \$55 million. Approximately 94% of these latter REO properties are held by three
10 debtor subsidiaries of Specialty Trust, which include Specialty Acquisition Corp., SAC II, and
11 SAC D-1, LLC.² Specialty Acquisition Corp. and SAC II are wholly owned subsidiaries of
12 Specialty Trust, and SAC D-1, LLC is a wholly owned subsidiary of Specialty Acquisition Corp.

13 Specialty Trust works in conjunction with three non-debtor affiliated entities that provide
14 primary services to Specialty Trust. These entities include Specialty Financial Corp., which is
15 responsible for Specialty Trust's day-to-day operations, Specialty Mortgage Corp., which
16 originates and services certain of Specialty Trust's real estate loans, and Specialty Capital, LLC,
17 a registered broker/dealer providing brokerage services to individual and institutional customers.
18 Each of these three entities is owned or indirectly owned by Mr. Gonfiantini III.

19 In return for a management fee, Specialty Financial Corp. ("SFC") manages and runs
20 Specialty Trust's day-to-day business operation and funds virtually all of Specialty Trust's
21 overhead (except for one part-time employee), including the retention and payment of the
22 individuals that manage Specialty Trust's business operations, and the payment of the rent and
23 utilities on the building occupied by Specialty Trust. As part of its general management duties,
24 SFC evaluates prospective real estate loans, generates loan originations and manages the loan
25 and asset portfolio of Specialty Trust. This general management arrangement is fairly typical in
26

27
28 ² Specialty Trust transfers most of the REO properties to its subsidiaries for insurance purposes as well as to
maintain compliance with regulations governing REITs.

1 a REIT structure, and has been in place between Specialty Trust and SFC, or SFC's predecessor,³
2 for approximately 12 years.

3 **B. The Financing of Specialty**

4 Specialty Trust currently maintains a \$29.25 million term loan (the "Term Loan") which
5 includes three participating commercial banks of which US Bank is the agent bank. The Term
6 Loan is secured by liens in certain qualified real estate and loans. The non-default rate of interest
7 under the Term Loan is the sum of (i) LIBOR plus 3%, plus (ii) 5% per annum of PIK interest.

8 Additionally, Specialty Trust has \$36.9 million outstanding under a secured and
9 collateralized investment note program. This note program contains individual notes (the
10 "Notes") with maturities ranging from 1 month to 10 years and annual interest rates varying from
11 4.5% to 8.5%. The Notes are comprised of two series of notes issued under two separate
12 indentures, in aggregate amounts outstanding of \$1.46 million (the "Old Notes") and \$35.44
13 million (the "New Notes"). The Old Notes and the New Notes are secured separately by eligible
14 assets comprised of real estate, loans, and other collateral that are pledged separate from the
15 Term Loan collateral.

16 Specialty Trust also has approximately \$29 million in unsecured subordinated notes (the
17 "Subordinated Notes") maturing on January 30, 2037.

18 The Term Loan is secured by qualified real estate loans and REOs with a current fair
19 market value of \$86.52 million. The approximate \$1.46 million owed to holders of the Old
20 Notes is secured by an REO with a current fair market value of approximately \$6.40 million.
21 The approximate \$35.44 million owed to the holders of the New Notes is secured by real estate
22 loans and REOs with a current fair market value of \$59.89 million. The Debtors' secured debt is
23 apparently also secured by additional qualified assets in the form of stock in subsidiaries. The
24 Debtors are presently investigating the status and beneficiary of the stock pledge. Debtor
25 subsidiaries Specialty Acquisition Corp., SAC D-1, LLC, and SAC-II, and non-debtor
26
27

28 ³ Prior to March 31, 2006, Specialty Mortgage Corp., also owned by Mr. Gonfiantini, was the entity that managed
Specialty Trust's operations.

1 subsidiaries JFP 1330, LLC, 5th & Lincoln, LLC, Oak Creek Condominiums, LLC are
2 guarantors of the Term Loan.

3 **C. Cause of Financial Problems**

4 The real estate finance industry has experienced sharp contraction since 2007, when the
5 national real estate market collapsed. Overall, there have been escalating rates of foreclosures on
6 properties and many REITs, mortgage finance companies and real estate lenders have been
7 forced to close operations. All players within Specialty Trust's target regions have largely been
8 affected by the economic crisis leaving a considerable void in these markets.

9 Specialty Trust has experienced a 37.2% decline in the value of its real estate loan
10 portfolio between December 31, 2008 and December 31, 2009, while its REO portfolio has
11 grown by 75.7%. Management believes the loan portfolio has stabilized and does not expect
12 further material write downs to the portfolio beyond the year end 2009. Furthermore,
13 management has identified and is in a position to capitalize on undervalued opportunities derived
14 from the recent real estate market fallout.

15 Despite extensive and long-term negotiations with US Bank, Specialty Trust was not able
16 to negotiate a restructuring of the US Bank debt that would give it the flexibility and requisite
17 liquidity it needed to get through the current difficult economic environment. In light of a
18 pending default under the Term Loan that would have occurred on April 20, 2010, which would
19 give US Bank the immediate right to sweep all of the Debtors' cash, an event that would put the
20 Debtors out of business, the Debtors were forced to file these chapter 11 cases. The chapter 11
21 will give the Debtors the breathing room to enhance their liquidity by selling certain of their
22 assets, and give them time to prepare and confirm a plan of reorganization that pays all of their
23 secured debt in full, which will allow the Debtors to maintain shareholder value.

24 Filed concurrently herewith, and incorporated herein by reference, is the *Declaration of*
25 *Nello Gonfiantini III in Support of the (1) Debtors' Motion for Order Directing Joint*
26 *Administration of Related Chapter 11 Cases Pursuant to Fed. Rule Bankr. P. 1015(b) and Local*
27 *Rule 1015(b); (2) Motion of Specialty Trust for Order Limiting Scope of Notice; and (3)*
28 *Debtors' Motion for Order (a) Authorizing Debtors to Utilize Cash Collateral Pursuant to 11*

1 *U.S.C. § 363 and (b) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* (the
2 “Gonfiantini Declaration”).

3 **Jurisdiction and Venue**

4 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This
5 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Debtors’ chapter 11
6 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and Local Bankruptcy
7 Rules.

8 **Relief Requested**

9 By this Motion, the Debtors seek entry of an order directing the joint administration of
10 their chapter 11 cases and the consolidation thereof for procedural purposes only.

11 The Debtors also request that the caption of their chapter 11 cases be modified to reflect
12 the joint administration of these chapter 11 cases substantially as follows:

13 IN THE UNITED STATES BANKRUPTCY COURT

14 FOR THE DISTRICT OF NEVADA

15 In re:

16 SPECIALTY TRUST, INC., et al.⁴

- 17 ☐ Affects this Debtor
18 ☐ Affects all Debtors
19 ☐ Affects Specialty Acquisition Corp.
20 ☐ Affects SAC II
21 ☐ Affects SAC D-1, LLC

Chapter 11

**Jointly Administered under
Case No. 10-51432-GWZ**

Case Nos:

10-51432-GWZ
10-5137-GWZ
10-51440-GWZ
10-51441-GWZ

Jointly Administered

27 _____
28 ⁴ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Specialty Trust, Inc. (2463); Specialty Acquisition Corp. (3680); SAC II (2463); and SAC D-1, LLC (1858).

1 In addition, the Debtors request that the Court authorize and direct that a notation
2 substantially similar to the following notation be entered on the docket for each of the Debtors to
3 reflect the joint administration of these cases:

4
5 An order (the "Joint Administration Order") has been entered in
6 this case directing the joint administration of the chapter 11 cases
7 listed below. The docket in case no. 10-51432 should be consulted
8 for all matters affecting this case.

9 The Debtors also request that the Court authorize that a combined service list be used for
10 the jointly administered cases and that combined notices be sent to creditors of the Debtors'
11 estates.

12 **Basis for Relief**

13 Bankruptcy Rule 1015(b) provides that, if two or more petitions are pending in the same
14 court by or against a debtor and an affiliate, the court may order the joint administration of the
15 estates of a debtor and its affiliates. *See* Fed. R. Bankr. P. 1015(b). The Gonfiantini Declaration,
16 filed simultaneously herewith, establishes that joint administration of these chapter 11 cases is
17 warranted. The Debtors' are affiliated companies whose financial affairs and business
18 operations are closely related. The joint administrative of these cases will ease the
19 administrative burden on the Court and the parties while protecting creditors of different estates
20 against potential conflicts of interest.

21 The Debtors anticipate that numerous notices, applications, motions, other pleadings,
22 hearings, and orders in these cases will affect all of the Debtors. With four (4) affiliated debtors,
23 each with its own case docket and approximately six hundred total potential creditors and interest
24 holders, the failure to administer these cases jointly could result in numerous duplicative
25 pleadings filed for each issue and served upon separate service lists. Such duplication of
26 substantially identical documents would be extremely wasteful and would unnecessarily
27 overburden the Clerk of this Court (the "Clerk") with the volume of paper.

28 Joint administration will permit the Clerk to use a single general docket for all of the
Debtors' cases and to combine notices to creditors and other parties in interest of the Debtors'
respective estates. Joint administration will also protect parties in interest by ensuring that such

1 parties in interest in each of the Debtors' respective chapter 11 cases will be apprised of the
2 various matters before the Court in all of these cases.

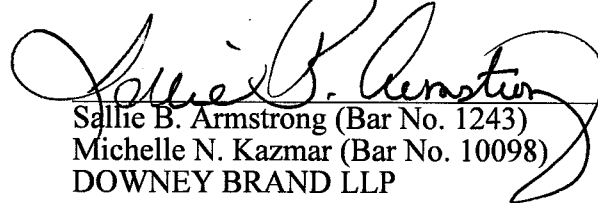
3 The Debtors request that the official caption to be used by all parties in all pleadings in
4 the jointly administered cases be in the form set forth above.

5 The rights of the respective creditors of each of the Debtors will not be adversely affected
6 by joint administration of these cases inasmuch as the relief sought is purely procedural and is in
7 no way intended to affect substantive rights. Each creditor and party in interest will maintain
8 whatever rights it has against the particular estate in which it allegedly has a claim or right.
9 Indeed, the rights of all creditors will be enhanced by the reduction in costs resulting from joint
10 administration. The Court will also be relieved of the burden of entering duplicative orders and
11 keeping duplicative files. Supervision of the administrative aspects of these chapter 11 cases by
12 the Office of the United States Trustee will also be simplified.

13 WHEREFORE, the Debtors respectfully request that the Court enter an order, in
14 substantially the form attached hereto as Exhibit A: (a) authorizing the joint administration of the
15 Debtors' cases; and (b) granting such other and further relief is proper.

16 **DATED** May 3, 2010.

DOWNEY BRAND LLP

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18 
19 Sallie B. Armstrong (Bar No. 1243)
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21 Proposed Nevada Counsel for the Debtors and
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25 Scotta E. McFarland (CA Bar No. 165391)
Victoria A. Newmark (CA Bar No. 183581)

26 Proposed Counsel for the Debtors and Debtors in
27 Possession
28

EXHIBIT A

EXHIBIT A

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**UNITED STATES BANKRUPTCY COURT
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Case No. 10-51437-GWZ

Chapter 11

In re

SAC II,

Debtor.

Case No. 10-51440-GWZ

Chapter 11

In re
SAC D-1, LLC,
Debtor.

Case No. 10-51441-GWZ

Chapter 11

**ORDER DIRECTING JOINT
ADMINISTRATION OF RELATED
CHAPTER 11 CASES PURSUANT TO FED.
RULE BANKR. P. 1015(b) AND LOCAL
RULE 1015(b)**

This matter coming before the Court on the *Debtors' Motion for Joint Administration of Related Chapter 11 Cases* (the "Motion")⁵ filed by the debtors and debtors in possession in the captioned chapter 11 cases (collectively, the "Debtors"); the Court having reviewed the Motion; the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157; (b) the Debtors are "affiliates" within the meaning of section 101(2) of the Bankruptcy Code; (c) the joint administration of the Debtors' cases is appropriate pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure; and (d) service and notice of the Motion was sufficient under the circumstances; and the Court being fully advised in the premises and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is hereby GRANTED, retroactive to the Petition Date.
2. The captioned chapter 11 cases are hereby consolidated for procedural purposes only and shall be jointly administered by this Court.
3. Nothing contained in this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of the above-captioned cases, and this Order shall be without prejudice to the rights of the Debtors to seek entry of an order substantively consolidating their respective cases.
4. The caption of their chapter 11 cases shall read as follows:

⁵ Capitalized terms not defined herein are given the meaning assigned to them in the Motion.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:

SPECIALTY TRUST, INC., et al. ⁶

- ☐ Affects this Debtor
- ☐ Affects all Debtors
- ☐ Affects Specialty Acquisition Corp.
- ☐ Affects SAC II
- ☐ Affects SAC D-1, LLC

Chapter 11

**Jointly Administered under
Case No. 10-51432-GWZ**

Case Nos:

10-51432-GWZ
10-5137-GWZ
10-51440-GWZ
10-51441-GWZ

Jointly Administered

5. A docket entry shall be made in each of Debtors' cases substantially as follows:

An order (the "Joint Administration Order") has been entered in this case directing the joint administration of the chapter 11 cases listed below. The docket in Case No. 10-51432-GWZ should be consulted for all matters affecting this case.

###

⁶ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: Specialty Trust, Inc. (2463); Specialty Acquisition Corp. (3680); SAC II (2463); and SAC D-1, LLC (1858).